



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2022-0528; FRL-10357-02-R3]

Air Plan Approval; West Virginia; 2021 Amendments to West Virginia's Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of West Virginia. The revision updates West Virginia's incorporation by reference of EPA's national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods. EPA is approving these revisions to the West Virginia SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2022-0528. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III,

1617 John F Kennedy Blvd, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2053. Ms. Nichols can also be reached via electronic mail at Nichols.Serena@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 17, 2022 (87 FR 50593), EPA published a notice of proposed rulemaking (NPRM) for the State of West Virginia. In the NPRM, EPA proposed approval of a formal SIP revision submitted on May 11, 2021. The formal SIP revision updates West Virginia's incorporation by reference of the NAAQS promulgated by EPA and found at 40 Code of Federal Regulations (CFR) part 50 and ambient air monitoring reference methods and equivalent methods promulgated by EPA found at 40 CFR part 53 into West Virginia's legislative rules.

II. Summary of SIP Revision and EPA Analysis

West Virginia Department of Environmental Protection (WVDEP) has historically chosen to incorporate by reference the Federal NAAQS, found at 40 CFR part 50, and the associated Federal ambient air monitoring reference methods and equivalent methods for these NAAQS found at 40 CFR part 53. When incorporating by reference these Federal regulations, WVDEP has specified that it is incorporating by reference these regulations as they existed on a certain date. The incorporation by reference of the NAAQS that is currently approved in the West Virginia SIP incorporates by reference 40 CFR parts 50 and 53 as they existed on June 1, 2019. West Virginia's May 11, 2021 SIP revision updates the State's incorporation by reference of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods, found in 40 CFR parts 50 and 53, respectively, as of June 1, 2020. Since the last West Virginia incorporation by reference of June 1, 2019, EPA: 1) designated one new equivalent method for measuring concentrations of ozone in ambient air; 2) designated one new reference method for measuring concentrations of nitrogen dioxide; 3) amended an existing reference method for measuring particulate matter (PM₁₀) in ambient air; 4) designated on new reference method for measuring concentrations of sulfur dioxide in ambient air; 5) designated one new

equivalent method for measuring concentrations of nitrogen dioxide in ambient air. See 84 FR 44299 (August 23, 2019), 84 FR 50833 (September 26, 2019), 85 FR 5958 (February 2, 2020), 85 FR 27221 (May 7, 2020).

The amendments to the legislative rule include changes to section 45-8-1 (General), 45-8-2 (Definitions), and 45-8-3 (Adoption of Standards). The amendments update West Virginia's incorporation by reference of the primary and secondary NAAQS and the ambient air monitoring reference and equivalent methods from June 1, 2019, to June 1, 2020. West Virginia is incorporating the Federal rules in 40 CFR parts 50 and 53 as they existed on June 1, 2020 into 45-8-1 and 45-8-3. The amendment to section 45-8-2 changes the wording of the definition of both the CAA and "Secretary."

No comments were received on the August 17, 2022 NPRM.

III. Final Action

EPA is approving the West Virginia SIP revision of May 11, 2021, updating the incorporation by reference of EPA's NAAQS and associated ambient air monitoring reference methods and equivalent methods.

IV. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of *45CSR8 – Ambient Air Quality Standards*, as effective June 1, 2021, as discussed in Section II. of this preamble. EPA has made, and will continue to make, these materials generally available through <https://www.regulations.gov> and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to

the SIP compilation.¹

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

¹ 62 FR 27968 (May 22, 1997).

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition

for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the West Virginia SIP revision updating its incorporation by reference of EPA’s NAAQS and associated ambient air monitoring reference methods and equivalent methods, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. In § 52.2520, the table in paragraph (c) entitled “EPA-Approved Regulations in the West Virginia SIP” is amended by revising the entries for “Section 45-8-1”, “Section 45-8-2”, “Section 45-8-3”, and “Section 45-8-4” under the heading “[45 CSR] Series 8 Ambient Air Quality Standards” to read as follows:

§ 52.2520 Identification of plan.

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(c)* * *

EPA-APPROVED REGULATIONS IN THE WEST VIRGINIA SIP

State citation [Chapter 16-20 or 45 CSR]	Title/subject	State effective date	EPA approval date	Additional explanation/ citation at 40 CFR 52.2565
* * * * *				
[45 CSR] Series 8 Ambient Air Quality Standards				
Section 45-8-1	General	6/1/21	<u>[Insert date of publication in the Federal Register]. [Insert Federal Register citation]</u>	Docket #2022- 0528.
Section 45-8-2	Definitions	6/1/21	<u>[Insert date of publication in the Federal Register]. [Insert Federal Register citation]</u>	Docket #2022- 0528.
Section 45-8-3	Adoption of Standards	6/1/21	<u>[Insert date of publication in the Federal Register]. [Insert Federal Register citation]</u>	Docket #2022- 0528.
Section 45-8-4	Inconsistency Between Rules	6/1/21	<u>[Insert date of publication in the Federal Register]. [Insert Federal Register citation]</u>	Docket #2022- 0528.
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[FR Doc. 2022-24339 Filed: 11/9/2022 8:45 am; Publication Date: 11/10/2022]